



**U.S. Department of Justice**

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By ECF

Hon. George B. Daniels  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 1310  
New York, NY 10007

Re: Plaintiffs' May 13, 2020, Letter in *Make the Road New York v. Pompeo*, No. 19-cv-11633

Dear Judge Daniels:

I represent the defendants in the above-captioned case. In a letter filed May 13, 2020, the plaintiffs argued that the Ninth Circuit's recent denial of a stay pending appeal in *Doe v. Trump*, No. 19-36020, 2020 WL 2110978 (9th Cir. May 4, 2020), undermines arguments that the defendants in this case have made in opposition to the plaintiffs' motion for preliminary injunction and in support of their motion to dismiss.

The Government notes that the *Doe* ruling is not binding on this court. Moreover, the decision is not persuasive, for several reasons: The panel was divided, and Judge Bress wrote a well-reasoned dissent explaining why the majority's ruling was in conflict with *Trump v. Hawaii*, 138 S. Ct. 2392 (2018), and other binding precedent. Moreover, the panel majority noted that its ruling was informed by the demanding standard applicable to a request for a stay pending appeal, and it took pains to note that it was not prejudging the merits of the appeal. *See, e.g.*, 2020 WL 2110978 at \*8, 13, 15. The Government's appeal from the preliminary injunction remains pending on the merits. In the meantime, the Government is continuing to comply with the injunction entered by the District of Oregon.

Sincerely,

/s/

James C. Luh  
Senior Trial Counsel  
United States Department of Justice

Cc: All counsel of record via ECF